

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Friday, October 11, 2002 – 9:00 a.m. – Room 405 State Capitol

Members Present:

Mr. Alan L. Sullivan, Chair
Mr. Kevin J. Worthen, Vice Chair
Rep. Patrice M. Arent
Mr. Michael E. Christensen
Rep. Greg J. Curtis
Sen. Mike Dmitrich
Chief Justice Christine Durham
Sen. David L. Gladwell
Mr. Morris D. Linton
Judge Jon M. Memmott
Dr. Michael Petersen
Mr. Robin Riggs
Speaker Martin R. Stephens

Members Absent:

Mr. Byron L. Harward
Ms. Kristine Strachan
Sen. John L. Valentine

Staff Present:

Mr. Jerry D. Howe, Research Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Cassandra Bauman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the commission secretary at 538-1032.

1. Commission Business

Chair Sullivan called the meeting to order at 9:08 a.m.

MOTION: Mr. Linton moved to approve the minutes of August 16, 2002 with a minor correction on page 3. The motion passed unanimously with Sen. Dmitrich, Rep. Arent, Rep. Curtis, and Mr. Riggs absent for the vote.

2. Article VI, Section 1, Power Vested in Senate, House, and People

Mr. Rees explained that the Legislative Management Committee has requested the CRC to review Article VI, Section 1 regarding the people's authority to legislate by initiative. The Management Committee was interested, he said, in how other state constitutional provisions govern the initiative process. He explained that Utah is 1 of 23 states which allows the people to legislate by initiative.

He explained to the Commission that the Management Committee is interested in this issue because of the recent *Gallivan* opinion in which the Supreme Court found a statute unconstitutional that required initiative petitioners to obtain a specified number of signatures from specified number of counties in the state. Mr. Rees distributed and reviewed "Initiatives in Utah – Selected Constitutional and Statutory Provisions" and "Excerpts from Majority Opinion in *Gallivan v. Walker*." He noted that the initiative in the *Gallivan* case did not obtain the specified county requirement and that the Supreme Court, under the Uniform Operation of Laws provision, found the specified county requirement to be unconstitutional.

Speaker Stephens indicated that the Legislative Management Committee referred the issue to the CRC to review whether a constitutional amendment would be appropriate with respect to the initiative process.

He indicated that the decision raises the question as to whether or not any statutory requirements can meet constitutional muster.

Rep. Curtis indicated that the federal equal protection clause may eventually be applied to state initiatives in Utah. Chief Justice Durham replied that federal courts have not found state constitutional provisions regarding initiatives to be in conflict with federal equal protection.

Sen. Dmitrich indicated that he and Sen. Valentine will be sponsoring a bill in the 2003 General Session to require a geographical requirement for initiative signatures based on senatorial districts so that the initiative signatures may meet the one person, one vote requirement.

Dr. Peterson indicated that since the Utah Supreme Court found the initiative process so important, it may be wise to provide some constitutional guidelines for the initiative process.

Chief Justice Durham said that it would be helpful to compare Utah's constitutional provision regarding the initiative process with the constitutional provisions of other states. Mr. Linton indicated that a review of case law interpreting those other state constitutional provisions would also be helpful.

Judge Memmott requested that the Commission study the legislation which Sen. Dmitrich mentioned and discuss whether a geographic requirement based a senatorial districts would best placed in the constitution or statute.

Mr. Lloyd Selinite, former legislator, explained that he is concerned with placing any initiative requirements in the constitution because of the difficulty in changing the constitution at a later date.

Mr. Rees indicated that two of the supreme court justices indicated that the statute is unconstitutional under the United States Constitution and that the Supreme Court could find a constitutional provision unconstitutional under the United States Constitution.

Sen. Gladwell indicated an interest in whether or not any other state constitutional provision has been interpreted to provide the people with co-equal legislative powers as the *Gallivan* decision seems to have interpreted the Utah provision to do.

3. Article VI, Section 29, Lending of Public Credit

Chair Sullivan indicated that the Governor's Office brought this issue to the Commission and noted the five options for discussion on page 35 of the October packet of materials.

Mr. Rees explained that the Commission has various options, noting that several of the options are drafted for discussion purposes regarding the issue of whether the provision should be limited to corporations, or if the language should include reference to any business entity.

Mr. Linton explained four primary issues the Commission should consider when evaluating each option:

(1) What is the interest the Commission is trying to promote—intellectual property, stock, or both; (2) What

is the scope of exercising a right in that interest; (3) What process needs to be established for state entities to acquire that interest; and (4) Is there adequate limitations on the exercise of the right to acquire the interest. The Commission agreed with Mr. Linton's assessment.

Mr. Worthen stated that option 4, on page 36 of the packet seems to diminish the authority of the Legislature to regulate the process by statute. Chair Sullivan questioned whether option 3 would include entities such as the University of Utah and proposed that the Commission review option 4, suggesting that the language might read: "The state or a public institution of post-secondary education may acquire an equity interest in a business entity as consideration for the sale, license, or other transfer to that business entity of intellectual property developed in whole or in part by that public institution of post-secondary education, and may hold or dispose of that equity interest."

Chair Sullivan explained that the language was drafted so that the state could not subscribe to the stock of new companies. He indicated that the universities are licensing intellectual property which is developed at the university. Usually, he explained, the university will get three types of consideration: cash, royalty, or equity. He suggested that the proposed amendment authorizes additional consideration in return for intellectual property, and that it is not an invitation for the universities to subscribe to stock.

Ms. Claire Geddes, Utah Legislative Watch, stated that the Utah Legislative Watch has great concern with this issue. She noted that prohibition to prevent the state from subscribing to stock was implemented for good and valid reasons. She explained that it is not possible for the state to represent the interests of the citizens when it owns stock in the private sector.

Rep. Curtis questioned if legislative approval or oversight would be limited by the suggested language. He also questioned the current process, expressing concern regarding the executive appropriation process, when other monies are available to the universities through stock ownership. Chair Sullivan indicated that the Commission will receive further information on the subject at a future meeting.

4. Article VI, Sections 16-21, Impeachment

Mr. Rees distributed "Resolution on Impeachment Authority" and explained that the draft legislation which would allow the House of Representatives to convene in an Impeachment Session outside a General Session for the sole purpose of impeachment, by a poll from all members with 2/3 concurrence. He discussed issues raised by the draft, which was distributed prior to the meeting, for the Commission to consider.

Rep. Arent said the extent to which the Legislature should have authority to call itself into session for impeachment should include other constitutional officers besides the governor. She also explained that legislators should only be compensated for the time which they are conducting business, regardless if the Legislature is "in session".

Chair Sullivan questioned whether the threshold for 2/3 concurrence for convening an Impeachment Session is too high of a threshold, indicating that 2/3 concurrence could indicate that 2/3 of the members

agree with the impeachment. He explained that the trial may have been decided before it starts. Speaker Stephens expressed the same concern.

Judge Memmott expressed concern regarding a lower threshold for convening the impeachment process. He stated he would favor the 2/3 majority.

Mr. Selinite noted that in 1977-1978, the Judiciary Interim Committee studied the issue of impeachment, including impeachable offenses. He stated that the committee decided to adopt impeachment rules in a non-impeachment environment. He urged that the House and Senate adopt impeachment rules and that the Commission should continue study of the issue.

Mr. Linton indicated that the legal counsel for the United States Senate could be contacted to provide opinion on the subject of impeachment. He noted that high limits for impeachment proceedings seems logical.

Speaker Stephens indicated that the Legislature ought to have the authority to pay legislators for only time in which business is conducted, not for the time the Legislature is in session. The constitution seems to indicate that legislators may be entitled to pay when in session, even when no legislative business is being conducted.

Chair Sullivan said that this issue should be discussed further at future meetings. Mr. Rees indicated that only one state has specified authorization for the Legislature to call itself into an impeachment session, but other states have authorization to call themselves into session for any reason, including impeachment, and that some states have full time legislatures.

5. Article IX, Legislative Apportionment

Mr. Howe distributed and reviewed "2000 Redistricting: Litigation Records." He noted that the number of law suits filed in any particular jurisdiction do not necessarily reflect whether the redistricting plans drawn were fair. He stated that litigation seems to be driven by a combination of factors, including: the demographics of the state, whether justice department pre-clearance is required, whether the state mandates supreme court review, and the degree to which the state has adopted redistricting criteria.

Rep. Arent indicated that redistricting criteria should be established by constitution or statute because the redistricting entity itself will be less likely to self-impose fair and adequate criteria. The proper motive for establishing criteria is so redistricting plans can be drawn based on pre-determined principles. The motive for a redistricting committee not to adopt criteria is two fold: (1) to avoid litigation; and (2) not to bind itself to pre-determined principles, thus providing more options to accomplish its objectives. It would be interesting, she said, to review other state constitutional provisions which establish redistricting criteria. Avoiding litigation and providing more options to the redistricting committee is not a sound reason not to adopt fair redistricting principles.

Judge Memmott indicated that there is some advantage to the Legislature redistricting because of the staff resources and institutional knowledge inherent in the process. He also stated that the media is more

likely to cover redistricting issues if the Legislature is responsible versus an independent commission. He explained that one advantage of independent commissions is that they seem to have a history of establishing credible criteria. Utah might be able to get the best of both situations if credible criteria is adopted for future redistricting by the legislature.

Chair Sullivan suggested that the Commission ought to vote at its next meeting whether it would like to continue its evaluation of independent redistricting commissions or if it would rather discuss the possibility of establishing constitutional criteria.

Ms. Sandy Peck, League of Women Voters, commented that she would like the Commission to focus on redistricting criteria.

MOTION: Mr. Linton moved that staff provide other state's constitutional criteria, and bibliography of reading materials on the topic of redistricting criteria.

Speaker Stephens suggested that to the extent possible, staff also explain the advantage and disadvantage of each criteria, and whether or not there is substantial litigation in other states regarding each criteria.

The motion passed unanimously with Sen. Dmitrich absent for the vote.

6. Other Items / Adjourn

Mr. Rees indicated that the Commission heard testimony regarding legal counsel for the State Treasurer and State Auditor. He stated that a working group consisting of the Attorney General's Office, State Treasurer, and State Auditor have made little progress.

Chair Sullivan adjourned the meeting at 11:25 a.m.